

asked the Court to cancel the hearing. Dkt. 65. As the Court noted, 28 U.S.C. § 2254(e)(2) does not preclude the Court from receiving “the evidence necessary to make the threshold procedural determination of whether the exception” applies. Dkt. 61 at 4-5. “It would make little sense to force a habeas petitioner to prove the elements of an exception to procedural bar without giving him the opportunity to do so.” *Id.* at 4 (citing *Patterson v. Johnson*, No. 3:99-cv-808-G, 2000 WL 1234661, at *2 (N.D. Tex. Aug. 31, 2000)).

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Mr. Murphy prays that this Court deny Respondent’s motion to cancel the evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that September 2, 2014, a copy of the foregoing pleading was electronically served on counsel for the Respondent by filing the document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court.

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